

**Nebraska Department of Education  
Private Postsecondary Career Schools  
Advisory Council Meeting**

**AGENDA  
Tuesday, September 4, 2012 at 1:00 p.m.**

Board Room, 6th Floor of State Office Building  
301 Centennial Mall South (Southeast corner of 14th & M Streets)  
Lincoln, Nebraska 68509

Website: <http://www.education.ne.gov/PPCS/Advisory%20Council.html>

1. Call to order
  - a. Announcement of the placement of the [Open Meetings Act](#) information
  - b. Roll call for [members](#) - introductions of visitors (if applicable)
2. Approval of Agenda for September 4, 2012
3. Approval of Minutes from December 6, 2010 meeting (attached below)
4. Old Business:
  - a. 30% Fee increase update from December 6, 2010 meeting
5. New business:
  - a. Discussion on Fee increase
    - i. Background
    - ii. Restructuring Fee option
    - iii. Flat increase option
  - b. Proposed changes to rule 41:
    - i. Distance Learning definition change, 002.12
    - ii. Exempt School grammatical change to match Statute, 003.01D
    - iii. Exempt School change due to Statute changes, 003.01G, I, J, K, L
    - iv. Deletion of section 011, Authority to Award Baccalaureate Degree per statute change
    - v. Numerical updates do to deletion of section 011
  - c. Proposed changes to Rule 42:
    - i. Distance Learning definition change, 002.14
    - ii. Exempt School changes due to Statute changes, 003.01H, I, J, K, and 003.02
    - iii. Clarification change in surety bond requirements in 005.02B5
  - d. Proposed changes to Rule 44:
    - i. Add definition of "Act"
    - ii. Add definition of "Short-term training"
    - iii. Numerical updates do to adding definitions

- iv. Update to section 003.05, 003.07, 003.08, and 004.01 to be consistent with Statute wording/changes
  - v. Add clarification to 005.06 in regards to schools subject to TRCF payments
- e. Proposed Revision of Statute:
  - i. Add to definition of “Out-of-state school” definition, 85-1603(15) for clarity
  - ii. Edit definition of “Private postsecondary career school” for clarity and update due to changing instructional methodology
  - iii. Addition to public postsecondary exemption in 85-1604(6) to include out of state public postsecondary schools
  - iv. Change exemption of schools regulated by other state agencies 85-1604(7) to include only the Nebraska Board of Barber Examiners
  - v. Clarify 85-1644 in regards to fees charged for transcripts
  - vi. Update 85-1656 to allow TRCF funds in excess of the maximum level be used for the purpose of administering the PPCS Act – creates a safety net; and raise TRCF fund minimum amount to \$250,000.00

6. Announcements

7. Adjournment

**OPEN MEETINGS ACT (Excerpted)**  
**EFFECTIVE AUGUST 30, 2009**

**84-1407 Act, how cited.**

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

**84-1408 Declaration of intent; meetings open to public.**

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

**84-1409 Terms, defined.**

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

**84-1410 Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.**

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

**84-1411 Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.**

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency

nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, of a board of an educational service unit, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;
- (d) At least one member of the state entity, advisory committee, board, or governing body is present at each site of the videoconference or telephone conference; and
- (e) No more than one-half of the state entity's, advisory committee's, board's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

- (a) The territory represented by the educational service unit or member public agencies of the entity or pool covers more than one county;
- (b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member or a member of the entity's or pool's governing body will be present;
- (c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board or entity or pool or at a place which will accommodate the anticipated audience;
- (d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;
- (e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;
- (f) At least one member of the educational service unit board or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;
- (g) The telephone conference call lasts no more than one hour; and
- (h) No more than one-half of the board's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

#### **84-1412 Meetings of public body; rights of public; public body; powers and duties.**

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

**84-1413 Meetings; minutes; roll call vote; secret ballot; when.**

- (1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.
- (2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality, a county, a learning community, a joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act which utilizes an electronic voting device which allows the yeas and nays of each member of such city council, village board, county board, or governing body to be readily seen by the public.
- (3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.
- (4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.
- (5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

**84-1414 Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.**

- (1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.
- (2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.
- (3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.
- (4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

# **NEBRASKA PRIVATE POSTSECONDARY CAREER SCHOOLS ADVISORY COUNCIL April 2012**

Ms. Sharon Brodhagen  
Cornhusker Better Business Bureau, Inc.  
Lincoln Branch Manager  
(Better Business Bureau representative)  
3 year term beginning November 6, 2009 and ending November 5, 2012

Ms. Roberta Worm  
Vatterott College  
(Trade/Technical schools representative)  
3-year term beginning September 6, 2010 and ending September 5, 2013

Ms. Diane Moore  
The Moore Group  
(Real Estate Schools Representative)  
3-year term beginning April 10, 2011 and ending April 9, 2014

Ms. Jacqueline Hornig  
Xenon International  
(School Licensed by Other State Agency representative)  
3-year term beginning April 16, 2012 and ending April 15, 2015

Sue Kozisek  
Myotherapy Institute  
(School Licensed by Other State Agency representative)  
3-year term beginning April 16, 2012 and ending April 15, 2015

Mr. Larry Marsh  
JTL Truck Driver Training  
(School Licensed by Other State Agency representative)  
3-year term beginning April 10, 2011 and ending April 9, 2014

**PRIVATE POSTSECONDARY CAREER SCHOOLS  
ADVISORY COUNCIL MEETING**

Monday, December 6, 2010

1:30 p.m.

Nebraska State Office Building

Conference Room "A"

301 Centennial Mall South

Lincoln, NE 68509

**MEMBERS PRESENT:** Susan Geschwender, Sharon Brodhagen, Steve Kollar, Kim Guyer

**MEMBERS ABSENT:** Sue Kozisek, Roberta Worm

**NDE STAFF PRESENT:** Brad Dirksen, Carol Grell, Sharon Katt (left at 3:20), Yvette Martin

Carol Grell called the meeting to order at 1:40 p.m.

Carol Grell opened with announcement of the open meetings act and roll was taken with each member introducing themselves.

Approval of agenda for today's meeting with one addition. Carol asked Advisory Council to add to the agenda the discussion of verbiage to be added to statute regarding Accreditation and Diploma Mills.

Carol Grell asked for a review of the minutes from the meeting held on October 29, 2010 and a motion to approve minutes. Susan Geschwender motioned and Kim Guyer seconded approval of minutes. The vote was unanimous to approve the minutes with a verbal vote of "aye".

**DISCUSSION ITEM:**

1. Carol Grell initiated discussion on the proposed revision to Statute 85-1643 Private Postsecondary Career Schools Cash Fund; created; use; fees; schedule; no refund. Discussion was held and Advisory Council proposed to wait on making a decision until Brad presented the Proposed Alternative Fees later during the meeting.
2. Discussion held to apprise the Council on language to be added to the Statute regarding "Accreditation and Diploma Mills". Suggested language proposed by the Congress was presented and our statute language will reflect the intent of the suggested language and what is appropriate for PPCS. This addition to the PPCS Statute is meant to protect Nebraska students and schools from unethical programs operating in Nebraska.
3. Brad Dirksen gave Power Point presentation on alternatives to consider in increasing fees. A discussion followed with a review of handouts demonstrating the various options. Option 1 was a review of fees charged considering percent of time spent on each action related to an assessed fee. Option 2 demonstrated a flat 30% fee increase. Carol presented Option 3 which basically reflected some of Option 1 with a few adjustments. Elements considered were time, travel and postage costs, for example.
4. The Council was also informed of proposed changes in PPCS Statutes – to fit with statute changes being proposed by the Coordinating Commission for Postsecondary Education to clarify and eliminate confusion between PPCS and Coordinating Commission. There was discussion of the language in 85-1604 (7) about "education and schools exempted from the Private Postsecondary Career School Act" – deleting the verbiage (Except as provided in subsection (9) of this section,..... as of September 2, 1977.....) Added to this statement is a clarification of "(an exempted degree program that leads to an

associate, bachelor, postgraduate and professional degree and regulated by agencies of this state other than the department (NDE) (ex. Coordinating Commission).

Advisory Council took a 10 minute break from 3:30 to 3:40.

**ACTION ITEMS:**

1. Motion was made by Kim Guyer to approve the change of language in statute 85-1643 Private Postsecondary Career Schools Cash Fund, and seconded by Susan Geschwender. Motion carried 100% with all members answering with "aye". Changes to proposed language in 85-1643 made by the Advisory Council during meeting; 4(a), remove wording "except that such fees shall not exceed one hundred ten percent of the previous year's total administrative cost. 4(b) will change "Total cost shall be determined by an annual audit of" to "Total cost of administration shall be determined by an annual audit of". 4(c) will be removed.

2. Motion was made by Steve Kollar and seconded by Kim Guyer to include the statement in statute regarding Accreditation and Diploma Mills. Motion carried 100% with all members answering with "aye".

3. Motion made by Susan Geschwender and seconded by Steve Kollar to withdraw the 10% increase in fees approved at the meeting on October 29, 2010, and change to 30% increase in fees rounded to the nearest dollar amount for the 2011-2012 fiscal year. Motion carried 100% with all members answering with "aye".

**ANNOUNCEMENTS:**

Discussion was held on next meeting date. Advisory Council decided to revisit the Proposed Alternative Fees after the statute change has been approved by the Legislature. This will, hopefully, be in May or June of 2011.

**ADJOURNMENT:**

Motion made by Kim Guyer and seconded by Susan Geschwender to adjourn meeting at 3:55.

**HANDOUTS:**

Proposed Alternative Fees, how Option 1 was figured, Proposed PPCS Changes to Statute 85-1643, Accreditation/Diploma Mill statement.